8

SUPREME COURT OF THE UNITED STATES.

No. ~~45.~~ 8.

AUGUSTE CHOUTEAU'S HEIRS, APP'TS,

VERSUS

THE UNITED STATES.

ON APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE MISSOURI DISTRICT.

INDEX.

	Original.	Print.
Petition to the Chief Justice U. S. for citation, &c.	1	1
Appeal allowed by do do	3	2
Citation	5	2
Service of	6	3
Appeal bond	7	3
Petition of Chouteau's heirs in the district court	9	
Exhibit No. 1. referred to in said petition.—Petition to the Lieutenant Governor and his order thereon	12	5
Do. No. 2. Petition to the Lieut. Governor and decree thereon	13	d
Do. No. 3. Plat and certificate of survey	14	6
Do. No. 4. Letter from the Governor General to Auguste Chouteau	16	6
Citation to district attorney	16	7
Answer of the district attorney	17	7
Opinion of the court	18	8
Decree of the court	26	13
Clerk's certificate	27	13

The petition of Auguste A. Chouteau, Gabriel Cerré Chouteau, Henry Chouteau, Edward Chouteau, Eulalie Paul, and René Paul, husband of said Eulalie, Louise Paul, and Gabriel Paul, husband of said Louise Paul, Emelie Smith, and Thomas F. Smith, husband of said Emelie, heirs of Auguste Chouteau, deceased, to the honorable the Chief Justice of the United States, respectfully sheweth:

That at the session of the district court of the United States for the district of Missouri, held at St. Louis, in February of the year 1830, last past,

a final decree was pronounced by said court in favor of the United States, in the cause of the heirs of Auguste Chouteau, petitioners, *vs.* the United States.

That on the hearing of said cause, and after said decree was pronounced, it was distinctly understood, and the intention was expressed by the counsel for your petitioners, that an appeal would be taken by them to the Supreme Court of the United States.

That immediately after said decree was pronounced, the said district court adjourned sine die, and since that time has ceased to exist, at least for the purpose of making final decisions, by virtue of that provision in the act of Congress of the 24th May, 1828, which declares that the act of the 26th May, 1824, shall be continued in force until the 26th May, 1830, and no longer.

That your petitioners, against whom the decree aforesaid was pronounced, availing themselves of that provision in the act of the 26th May, 1824, which declares that, in all cases, the party against whom the decree may be finally given, shall be entitled to an appeal within one year from the time of its rendition to the Supreme Court of the United States, have applied to the clerk of said district court of Missouri, under the act of 1824, and have obtained a transcript of the record in said cause, and have applied to the Judge of said district court for a citation to be directed to the proper officer of the United States, and have tendered the necessary appeal bond, and have prayed that said Judge should allow the appeal, and should do such other judicial act or acts as might be necessary to enable your petitioners to avail themselves of the right of appeal, so to them given by the act of Congress of 1824, continued by the act of 1828, aforesaid.

Your petitioners further respectfully sheweth, that said Judge having taken said application into consideration, has decided that he has ceased to have any authority under the act of 1824, or under any other act of Congress, continuing or amending the same, and therefore has declined allowing the appeal or issuing the citation prayed for by your petitioners.

Your petitioners sheweth, that, in consequence of the above decision of the said district Judge, they will be deprived of their right of appeal, unless the honorable the Supreme Court, or a Judge thereof, shall interpose to relieve them.

Wherefore your petitioners pray that a citation be issued in due form in the above cause, directed to the proper officer, requiring him to appear and shew cause in the honorable the Supreme Court of the United States, at the present term thereof, why said decree should not be reversed, and that the appeal bond ready to be tendered by your petitioners may be approved of, if found sufficient, and that such other order may be made as to your honor shall seem proper in the premises, and your petitioners will ever pray, &c.

L. E. LAWLESS,
Att'y for plaintiffs.

Appeal allowed.

J. MARSHALL,
Ch. Just. of the U. S.

UNITED STATES OF AMERICA TO THE UNITED STATES, *greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Mon-

9

day in August next, pursuant to an appeal filed in the Clerk's office of the district court of the United States for the district of Missouri, wherein Auguste A. Chouteau, Gabriel Cerré Chouteau, Henry Chouteau, Edward Chouteau, René Paul, and Eulalie, his wife, Gabriel Paul, and Louise, his wife, and Thomas F. Smith, and Emelie, his wife, heirs of Auguste Chouteau, deceased, are appellants, and the United States is appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Marshall, Chief Justice of the Supreme Court of the United States, at the City of Washington, this 17th day of January, A. D. 1831.

J. MARSHALL,
Ch. Just. of the U. S.

Washington City, January 18th, 1831.—Served this citation on Mr. Wirt, by leaving with him a true copy and shewing him the original at the same time.

THOMAS WOODWARD.

Sworn to in open court.

WM. THOS. CARROLL, *C. S. C. U. S.*

Know all men by these presents, that we, Marie P. Leduc and Luke E. Lawless, are held and firmly bound unto the United States in the full and just sum of two hundred dollars, to be paid to the said the United States' certain attorney or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this seventeenth day of January, in the year of our Lord one thousand eight hundred and thirty-one.

Whereas lately, at a district court of the United States for the district of Missouri, in a suit depending in said district court, wherein Auguste Chouteau's heirs were petitioners, and the United States was defendant, a final decree was passed against the said Chouteau's heirs, and the said Chouteau's heirs having entered an appeal from the said decree of the said district court to the Supreme Court of the United States, and obtained a citation directed to the said United States, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of August next:

Now the condition of the above obligation is such, that if the said Auguste Chouteau's heirs shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the obligation to be void, else to remain in full force and virtue.

M. P. LEDUC, [SEAL.]
L. E. LAWLESS. [SEAL.]

Sealed and delivered in presence of
WM. THO. CARROLL.

Approved by

J. MARSHALL,
Ch. Just. of the U. S.

UNITED STATES OF AMERICA, MISSOURI DISTRICT, set.

Be it remembered, that heretofore, to wit, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and twenty-nine, Henry Chouteau, and others, heirs and devisees of Auguste Chouteau, deceased, filed in the office of the clerk of the United States' court for the Missouri district, under authority of an act of Congress, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and the Territory of Arkansas to institute proceedings to try the validity of their claims," their petition praying for the confirmation of their title to twelve hundred and eighty-one arpents of land, as therein described, which said petition is in the words and figures following, to wit:

To the honorable the district court of the United States for the district of Missouri:

The petition of Auguste A. Chouteau, Gabriel Ceré Chouteau, Henry Chouteau, Edward Chouteau, Eulalie Paul, and René Paul, husband of said Eulalie, Louise Paul, and Gabriel Paul, husband of said Louise, Emelie Smith, and Thomas F. Smith, husband of said Emilie, respectfully showeth, that in the year 1799 Auguste A. Chouteau, deceased, late of St. Louis, the father of your petitioners, applied to and obtained permission from the Government then existing in Upper Louisiana, to establish a distillery in or near the town of St. Louis, as will more fully appear by the petition and order thereon, dated the 5th November, 1799, and 3d January, 1800, which are herewith shown to the court and prayed to be taken as part of this petition, marked No. 1; that on the fifth day of January, 1800, said Auguste Chouteau presented his petition of that date to the Lieutenant Governor of the province of Upper Louisiana, praying that a tract of land containing twelve hundred and eighty-one arpents, superficial measure of Paris, situated near the town of St. Louis, bounded on the north by a tract granted to Doctor John Watkins, on the south and on the west by the lands of the third line of concessions, should be granted to the said Auguste Chouteau and his heirs, for the purpose of enabling said Auguste Chouteau to obtain a sufficient supply of fire wood for the distillery aforesaid; that on the same day, to wit, the 5th January, 1800, the said Lieutenant Governor made his decree conformably to the prayer of said petition, whereby said Lieutenant Governor directed and ordered that the surveyor of the said province, Don Antonio Soulard, should put the said Auguste Chouteau in possession of the said tract of twelve hundred and eighty-one arpents, in the place indicated and demanded, to the end that said Auguste Chouteau might afterwards obtain the complete title thereto from the Governor General, all which will appear by said petition and decree, now here produced, marked No. 2, and which petition and decree is prayed to be taken as part of this petition; that afterwards, in obedience to said decree, to wit, on the fifth day of March, 1801, the said surveyor, Don Antonio Soulard, delivered the possession of said tract to said Auguste, and executed a survey and plat of survey thereof, as will more fully appear by the said plat and certificate of survey, bearing date the 10th April, 1801, now here produced, marked No. 3 and which said plat and certificate were recorded in book A, p. 43, No. 82, in the office of said surveyor, as by reference to the said certificate and to said record in the office of the surveyor of this district will appear; that said decrees so made by said Lieutenant Governor, were made in pursuance of the special instruction given by the Governor General of Louisiana, Don Ma-

nuel Gayoso De Lemos, to said Lieutenant Governor, to favor and forward the aforesaid undertakings of said Auguste Chouteau, as will appear by the letter of said Governor General, addressed to said Auguste Chouteau, under date the 20th May, 1799, in answer to an application made by said Auguste Chouteau to said Governor General, as will appear by reference to said original letter herewith exhibited, marked No. 4, and prayed to be taken as part of this petition; that, by virtue of said decrees, survey, and delivery of possession, said Auguste occupied and enjoyed said tract, so granted, as the lawful proprietor thereof, from the date of said delivery of possession until the decease of said Auguste Chouteau; that said Auguste, during his life, did, in conformity to the acts of Congress in that case made and provided, submit his claim to said tract, derived as aforesaid, to the board of commissioners heretofore created for the settlement and adjudication of French and Spanish land claims in Upper Louisiana; that said board rejected said claim on the sole ground that a tract of a league square having been already confirmed to said Auguste Chouteau, the board had not power under the law, as it then stood, to confirm to said Chouteau any greater quantity; and your petitioners show that said board, for the purpose, as it is supposed, of testifying their sense of the merits of said claim, did cause to be endorsed on the back of a document therein exhibited to them the words "bona fide," as will appear, reference being had to said document No. 2, herein before exhibited; your petitioners further show, that said Auguste Chouteau has departed this life, and that previous to his death he made his last will and testament, in due form of law, whereby he devised to your petitioners the said tract of twelve hundred and eighty-one arpents, besides other property, to your petitioners and their heirs, as tenants in common. Wherefore your petitioners pray that said title may be inquired into, and that same be confirmed, as same would have been confirmed had not the sovereignty of said province been transferred to the United States.

STROTHER & LAWLESS,
Attorneys for petitioners.

Translations of the exhibits, as used in evidence on the trial of this cause, and referred to in the foregoing petition, are in the words and figures following, to wit:

No. 1.

To Mr. Charles Dehault Delassus, Lieutenant Colonel, attached to the regiment of Louisiana, and Lieutenant Governor of the upper part of same province, &c.

Auguste Chouteau has the honor to expose, that he wishes to establish, in this town, a manufacture proper to distil the several kinds of grains raised in this dependency, (to) supply the wants of the consumption of the place, of which remote distance to the chief city renders the importation too expensive to draw from it annually what is necessary for its use. Wherefore, sir, the supplicant, previous to subjecting himself to considerable expenses to form such an establishment, wishes to obtain the honor of your consent, in order that hereafter he may not be subject to any alteration hurtful to his interests; wherefore the supplicant will acknowledge your goodness, if you grant his request.

AUGUSTE CHOUTEAU.

St. Louis of Illinois, *November 5th*, 1799.

ST. LOUIS OF ILLINOIS, *January 3d*, 1800.

Considering that the establishment which the supplicant proposes to form will be useful to the public and to commerce, because there does not exist any of this nature, and that he will procure liquors in a greater abundance, and at a less price than those which are imported, and in very little quantity, from New Orleans, we grant the request.

CHARLES DEHAULT DELASSUS, [SEAL.]

No. 2.

To Mr. Charles Dehault Delassus, Lieutenant Colonel, attached to the fixed regiment of Louisiana, and Lieutenant Governor of the upper part of said province.

Auguste Chouteau, merchant, of this town, has the honor to represent, that the lands adjacent to this town being mostly conceded, and timber b coming daily very scarce, he is very much embarrassed in the carrying c of the considerable distillery which you have permitted him to establish by your decree, dated 5th of November of last year; consequentl , he hopes you will be pleased to assist him in his views, and have the goodness to grant him the concession of 1,281 superficial arpents of this land, situated on the 4th concession in depth of the land adjoining this town; bounded north by the land of Dr. John Watkins; south and west, by the lands of the 3d concession. The supplicant, besides having the intention to establish the said lands, hopes to obtain of your justice the favor which he solicits.

AUGUSTE CHOUTEAU.

ST. LOUIS, *January 5th*, 1800.

ST. LOUIS OF ILLINOIS, *January 5th*, 1800.

Being satisfied that the supplicant has sufficient means to make available, in the term of the regulation of the Governor General of this province, the lands which he demands, the surveyor of this Upper Louisiana, Mr. Anthony Soulard, will put him in possession of the 1,281 arpents of land, in the place where he asks it; and afterwards the applicant will have to solicit the formal title of concessions of the Intendant General of these provinces, to whom belongs, by order of his M—, the disposing and conceding every kind of vacant lands of the royal domains.

CHARLES DEHAULT DELASSUS.

No. 3.

UPPER LOUISIANA, DISTRICT OF ST. LOUIS OF ILLINOIS.

NOTE.—The trees adjacent to the landmarks appear by the figurative plat, and the boundaries are marked from twenty to twenty arpents, and the landmarks of each one of the boundary corners of said land are of stone, cemented with cinders of the forge. All line trees have a blaze, and 2 notches below. Trees on the right and left of the lines are merely blazed.* Registered book A, page 43, No. 82.

REMARKS.—The tract of land marked (AA) belonged, formerly, to Mr. Laclede Liguest, and was surveyed according to the metes and bounds of the old lands of this town, by Martin Durald, according to the abstract I

* For plat, see original.

made of the Livre Terrien, *ou cadastre en forme de proces verbal*, 1772, pages 47 and 49; the front line of said land (AA) was N. 26 E., and the line in depth was S. 64° E. These surveys were made according to the true meridian, as the records of the surveys will show by comparing the courses of those lines. I find that the magnetic needle varied 4° to the east, which produces a difference in the courses of the lines of said tract of land, viz: N. 22° E. instead of 26°, and S. 68 E. instead of 64°.

I, Anthony Soulard, principal deputy surveyor of Upper Louisiana, certify, that on the 5th day of March, present year, (in virtue of the annexed decree of the Lieutenant Governor and Lieutenant Colonel of the royal armies, Mr. Charles Dehault Delassus, dated January 5th, of last year,) I went on the land of Auguste Chouteau to survey it, according to his request, to contain 1,281 arpents in superficies, which admeasurements were made in presence of the proprietor and of the adjacent neighbors, with the perch of Paris, having 18 feet in length, according to the custom adopted in this province of Louisiana, and without regard to the variation of the compass, which is 7° 30' E., as appears in the preceding diagram, which land is situated at about 4 miles N. 56½° W. of this town, and bounded as follows: north, by the lands of John Watkins and Philip Riviere, and vacant lands of the royal domains; south and west, by said vacant lands; and east, by lands of sundry inhabitants of this town of St. Louis.

In testimony whereof, I give these presents, with the foregoing figurative plan, in which are indicated the dimensions, and metes and bounds, both natural and artificial, on the periphery of said land. St. Louis of Illinois, April 10th, 1801.

ANTONIO SOULARD, *Agr. par.*

No. 4.

NEW ORLEANS, *May 20th*, 1799.

MY DEAR FRIEND: Wishing to testify to you my esteem, by every opportunity, I merely assure you of my esteem, promising you to answer your letter by the boat that just arrived, and which will leave here next week.

In my instructions to Mr. Delassus, I recommend him particularly to favor all your undertakings, &c. &c.

Adieu: I am in such a hurry that I have but the time to tell you that I am your sincere friend and most humble servant,

MANUEL GAYOSO DE LEMOS.

And thereupon, on the said 18th day of May, in the year 1829, the clerk of the said court issued a citation to the attorney of the United States for the district of Missouri, in the words and figures following, to wit:

MISSOURI DISTRICT, set.—*The President of the United States of America to the Marshal of said district, greeting:*

You are hereby commanded to notify and cite the attorney of the United States for the district of Missouri, that he be and appear before the court of the United States for the Missouri district on the fourth Monday of June next, then and there to answer the petition of Auguste A. Chouteau, Gabriel Cerré Chouteau, Henry Chouteau, Edward Chouteau, Eulalie Paul, and René Paul, husband of said Eulalie, Louise Paul, and Gabriel Paul, husband of said Louise, Emilie Smith, and Thomas F. Smith, husband of said Emilie, heirs and devisees of Auguste Chouteau, deceased, who pray

the confirmation of twelve hundred and eighty-one arpents of land, and make defence, if any he has, or knows of any thing to say why the same should not be confirmed accordingly; hereof fail not, and have you then there this writ.

Witness the honorable James H. Peck, esquire, Judge of the United States for the Missouri district, the eighteenth day of May, 1829.

Issued at office, in St. Louis, under my private seal, there being no public seal provided, the day and year last aforesaid.

ISAAC BARTON, *Clerk.* [SEAL.]

Which said citation was duly returned by the marshal of said district, with his return thereon endorsed, in the words and figures following, to wit:

Served this citation on Beverly Allen, United States' attorney for the Missouri district, at St. Louis, the 15th June, 1829, and gave him a copy of the petition filed in this behalf.

JOHN SIMONDS, Jr., *Marshal,*
By D. E. Cuyler, Dep. Marshal.

And afterwards, to wit, at the June session of said district court, in the year aforesaid, comes the attorney for the United States and files his answer to said petition; and thereupon, on application of said petitioners, by their solicitor, and with the consent of said attorney for the United States, this cause is continued.

The said answer of the attorney for the United States, filed to said petition, is as follows, to wit:

The answer of Beverly Allen, attorney of the United States, to the petition of the devisees of Auguste Chouteau, praying the confirmation of a tract of land containing 1,281 arpents. This respondent, for and on behalf of the United States of America, reserving to himself and to the said United States, now and at all times hereafter, all manner of advantage of exception to the manifold errors, imperfections, and uncertainties, in the said petition contained, for answer thereto, or to so much thereof as this respondent deems it necessary and material for him to answer, answering, says, that he is wholly ignorant and uninformed of all and every the matters and things in said petition contained, and therefore he does not admit the same or any part thereof to be true, but prays the court that the said petitioners may be held and required to prove and substantiate the material allegations in said petition contained, and all such other matters and things, the existence whereof may be deemed essential and necessary for the confirmation of said claim. And this respondent, &c.

BEVERLY ALLEN, *U. S. Att. Miso. Dist.*

And afterwards, to wit, at the October session of said district court, in the year 1829, come as well the petitioners, by their solicitor, as the attorney for the United States, and this cause coming on to be heard and debated, upon the petition, answer, exhibits, and testimony, and all and singular the premises being seen and heard, and to the court submitted: whereupon, and for that the court here are not advised what decree to render of and concerning the premises aforesaid, they will consider thereof until the next session of this court, until which time this cause is continued.

And afterwards, at the January session of said district court, in the year eighteen hundred and thirty, come again as well the said petitioners, by

12

their solicitors, as the attorney of the United States, to hear the judgment of the court; and the court here now being sufficiently advised of and concerning the premises, and it appearing to the court that the petition, in substance, sets forth, that in the year seventeen hundred and ninety-nine Auguste Chouteau, deceased, late of the county of St. Louis, and father of said petitioners, applied to and obtained of the government then existing in Upper Louisiana, permission to establish a distillery in or near the town of St. Louis. That on the fifth day of January, in the year eighteen hundred, said Auguste Chouteau presented his petition, of that date, to the Lieutenant Governor of the province of Upper Louisiana, praying that a tract of twelve hundred and eighty-one arpents of land, superficial measure of Paris, situated near the town of St. Louis, bounded on the north by a tract granted to Doctor John Watkins, on the south and on the west by the lands of the third line of concessions, should be granted to the said Auguste Chouteau and his heirs, for the purpose of enabling the said Auguste Chouteau to obtain a sufficient supply of pine wood for the distillery aforesaid. That on the said fifth day of January, in the year aforesaid, the said Lieutenat Governor made his decree conformably to the prayer of said petition, and directed and ordered that the surveyor of the said province, Don Antonio Soulard, should put the said Auguste Chouteau in possession of the said tract of twelve hundred and eighty-one arpents, in the place indicated and demanded, to the end that the said Auguste Chouteau might afterwards obtain the complete title thereto from the Governor General. That afterwards, in obedience to said decree, to wit, on the fifth day of March, in the year eighteen hundred and one, the said Don Antonio Soulard delivered the possession of said tract to the said Auguste, and executed a survey and plat, and certificate of survey thereof. That said plat and certificate of survey were recorded in book A, page 43, No. 82, in the office of said surveyor. That said decrees, so made, were made by said Lieutenant Governor in pursuance of general instructions given by the Governor General of Louisiana, Don Manuel Gayoso de Lemos, to said Lieutenant Governor, to favor and forward the aforesaid undertakings of the said Auguste Chouteau. That by virtue of said decrees, survey, and delivery of possession, said Auguste occupied and enjoyed said tract, so granted, as the lawful proprietor thereof, from the date of said delivery of possession until the decease of said Auguste Chouteau. That said Auguste, during his life, did, in conformity to the acts of Congress in that case made and provided, submit his claim to said tract to the board of commissioners, heretofore created for the settlement and adjudication of French and Spanish land claims in Upper Louisiana. That said board rejected said claim on the sole ground that a tract of a league square having been already confirmed to the said Auguste Chouteau, the board had not power under the law, as it then stood, to confirm to the said Chouteau any greater quantity. That said Auguste Chouteau has departed this life, and that previous to his death he made his last will and testament, whereby he devised to said petitioners, and their heirs, as tenants in common, the said tract of twelve hundred and eighty one arpents. The petition then prays that said title may be inquired into and confirmed.

The attorney of the United States, for answer to said petition, states, that the respondent is wholly ignorant of the matters and things in said petition contained, and that he neither admits nor denies them, or any part of them, but prays that the said petitioners may be held and required to prove the

material allegations in said petition contained, and all matters and things that may be deemed necessary for the confirmation of said claim.

And it appearing to the court by the evidence offered on behalf of the petitioners that said Auguste Chouteau, by application in writing, to the Lieutenant Governor of Upper Louisiana, dated on the fifth day of November, in the year seventeen hundred and ninety-nine, asked permission to erect a distillery in the town of St. Louis, and that said permission was given on the third day of January, eighteen hundred. That, on the fifth day of January, of the same year, 1800, the said Auguste Chouteau petitioned the Lieutenant Governor to grant him a concession of twelve hundred and eighty-one arpents of land, to assist him in his views of carrying on said distillery. That by his decree, also dated on the fifth day of January, eighteen hundred, the said Lieutenant Governor ordered Antoine Soulard, the surveyor general of Upper Louisiana, to put the said Auguste Chouteau in possession of the twelve hundred and eighty-one arpents petitioned for. That, in pursuance of the said order and decree, the said surveyor, on the fifth day of March, in the year eighteen hundred and one, surveyed and put the said Auguste Chouteau in possession of the said premises. That previous to the concession and to the permission to erect a distillery, the said Auguste Chouteau received a letter from the Governor General of Louisiana, Don Manuel Gayoso de Lemos, dated at New Orleans the twentieth day of May, seventeen hundred and twenty, informing him that, in his instructions, he had recommended to the said Lieutenant Governor to favor all the undertakings of said Chouteau.

Pierre Chouteau, a witness in this case on behalf of the petitioners, states, that Auguste Chouteau and Antoine Laugrain, in company, about the year seventeen hundred and ninety-five or seventeen hundred and ninety-six, established a small distillery; that said distillery was in operation when said Auguste Chouteau applied for permission, in the year seventeen hundred and ninety-nine, to establish a distillery on a larger scale at the same place; that said Auguste Chouteau accordingly erected said distillery, after said permission was obtained, and continued to distil therein at the rate of two thousand five hundred gallons to three thousand gallons of spirits per annum until said distillery was destroyed, about ten years ago; that said Auguste began to cut wood on the Cote Brillante tract of twelve hundred and eighty one arpents, for the use of his said distillery, and for the use of his house, from the date of the concession to the time of his death; that said Auguste Chouteau was owner, in the years seventeen hundred and ninety-eight and ninety-nine, of sixty or seventy slaves, forty or fifty horses, two hundred and fifty to three hundred hogs, sixty to seventy sheep, about ninety head of horned cattle; that witness was in New Orleans in eighteen hundred and two and eighteen hundred and three; that he applied to Morales in May, eighteen hundred and two, for a complete title for certain land north of St. Louis; that Morales, in reply to his application, informed him that the treaty had confirmed that with other incomplete titles, and that it was not necessary that he, witness, should have the complete title asked for, and that he might tell the people of this country that they might make themselves easy about their titles, as precaution had been taken to confirm them by the treaty, and that, on his return to this country from New Orleans, he informed many of the inhabitants to that effect; that Mr. Soulard, the surveyor of Upper Louisiana, was with witness in New Orleans in May, eighteen hundred and two, but was not present when Morales told him the above.

13

Pascal L. Cerré, a witness in this case on behalf of said petitioners, states, that he thinks distillery was established about the date of the grant: cannot say the precise period: that Auguste Chouteau had, in seventeen hundred and ninety-eight, about eighty or a hundred head of horned cattle, about one hundred and forty or fifty horses, three or four hundred hogs at least, about forty slaves, some sheep; that Auguste Chouteau was considered wealthy, and was possessed of large property besides said cattle, horses, hogs, sheep, and slaves; that there were two or three small distilleries in the country, but none on so large a scale as that of Chouteau.

And it further appearing to the court that the claim of the said Auguste to the said land was presented to the board of commissioners for the adjustment of land titles in the Territory of Missouri, and by them rejected, as stated in said petition; and that during the present year the said Auguste died, leaving a last will and testament, by which the said land was devised to the said petitioners.

And it appearing in evidence to the court, on behalf of the United States, that a petition of the said Auguste Chouteau, dated on the twenty-fourth day of January, in the year one thousand seven hundred and ninety-eight, was presented to the said Lieutenant Governor, Don Zenon Trudeau, on which a concession issued on the twenty-fifth day of the same month and year—a translation of which said petition and concession, as used in evidence before the court, is in the words and figures following, to wit:

To Don Zenon Trudeau, Lieutenant Governor of the western part of Illinois:

Auguste Chouteau, merchant, of this town, father of a family, and proprietor of a sufficiently large number of slaves, has the honor of representing to you, that, considering the excessive price of butchers' meat, and the uncertainty with which the public is supplied, he has conceived the project of ("a vacharie,") cattle raising on a large scale; wherefore, and filled with confidence in the generosity of the Government, he has the honor of petitioning you to have the goodness to grant him the concession of a tract of land in superficies 7,056 arpents, which is situated on the north bank of the Missouri, at about 105 miles from its mouth, and will have for its centre the river commonly known as the "*river Au Vase,*" (Mud river, or river of Pigs.) The petitioner hopes that you will be pleased to do justice to his petition, with the same goodness and protection which you have never ceased to bestow upon industry ever since we have enjoyed the happiness of your Government.

St. Louis, *24th January*, 1798.

St. Louis of Illinois, *this 25th January*, 1798.

The surveyor, Don Anthony Soulard, will put the person interested in possession of the land which he petitions for, it being understood that it will not injure the neighbors; and having performed his survey, he will draw it out at length, and deliver it to the party, that he may apply to obtain the concession from the senior Governor General. And on behalf of the United States was also offered in evidence, duly certified by the recorder of land titles in the State of Missouri, an extract from the minutes of the proceedings of the board of commissioners for the adjustment of land titles in the Territory of Missouri; which said extract is in the words and figures following, to wit:

June 16th, 1806. The board met agreeably to adjournment. Present, the honorable John B. C. Lucas, Clement B. Penrose, and James L. Donelson, esqrs.

The same (Daniel Clark,) assignee of Auguste Chouteau, claiming 7,056 arpents of land, situate at the river Au Vase, district of St. Charles, produces a concession from Zenon Trudeau for the same, dated 25th January, 1798; a survey of the same, dated 17th March, and certified 1st May, 1801, and a deed of transfer of said land, dated 8th September, 1804. Auguste Chouteau, being duly sworn, says he is in no way interested in the said tract of land, and that he received the above concession at the time it bears date. This claim being unsupported by actual inhabitation and cultivation, the board reject the same, and observe, that the aforesaid concession is not duly registered, but that the same is neither antedated nor fraudulent.

And on behalf of the United States was further offered in evidence, an extract from the opinions of the recorder of land titles, which said extract is duly certified to be a true copy from one of five small books on file in the office of said recorder, containing the opinions of the late recorder in his own handwriting, dated 1st November, 1815, and signed F. Bates, recorder of land titles; which said extract is in the words and figures following, to wit:

Opinions of the Recorder of land titles.

Con. order, warrants of survey.	Survey.	Notice to the Recorder.	Land claimed—situation.	Pos'n. Inh'n. Cultivation.	Opinions of the Recorder.
Con. fr. Zenon Trudeau, Lieut. Gov. 25th Jan. 1798.	Survey 17th M'h, 1801, 75 ms W. of St. Louis.	Dan'l Clark, asse. of Auguste Chouteau.	7,056 arp's, Missouri, c'ty of St. Charles.		Confirmed for the quantity contained in a league square, O. S. Record, A, p. 118, rep. 283.

And further evidence in this cause, consisting of the depositions of Charles Dehault Delassus, Mary P. Leduc, and Albert Tison; and also transcripts of the several papers referred to in those depositions, with a sworn translation of such of the papers as are in a foreign language; and also a copy of concession to John B. Janis; the evidence of Philip Fine; a copy of the commission of Charles Dehault Delassus, as Lieutenant Governor, with a sworn translation; a copy of a complete title to Regis Loisel, with a sworn translation; a copy of a complete title to Jacques De St. Vrain, with a sworn translation; a copy of a complete title to Charles Gratiot, with a sworn translation; was offered on behalf of the petitioners. The solicitors for said petitioners prayed that it may not be enrolled as a part of the evidence in this cause, as it would unnecessarily prolong the record, and, waiving all benefit of exception for the omission to enrol, the same is accordingly not enrolled. No other evidence was offered on behalf of either of the parties.

And for that it seems to the court, that by the royal order of Spain of the twenty-fourth of August, in the year seventeen hundred and seventy, directed to the province of Louisiana, and his successors in office, the instruction which had been framed by General Alexander O'Riley, of the date of the eighteenth day of February, of the same year, was exclusively to regulate the grant and distribution of the crown lands in Louisiana so long as

the king should not otherwise dispose; and for that the decree of the same king of the twenty-second day of October, seventeen hundred and ninety-eight, which transferred the power to grant and distribute those lands to the intendancy of that province, and revoked the power by which, under the said royal order, the said Governors had distributed the said lands, did not abrogate the said instruction, but left the same in full force; and also introduced the royal regulation of seventeen hundred and fifty-four, and the laws cited therein, as well as the eighty-first article for the establishment of the intendants of New Spain. And for that, according to the said instruction, and also according to the regulations made by Morales, the Intendant of the said province, dated the seventeenth of July, seventeen hundred and ninety-nine, the claim and title of the said petitioners derived through the said Auguste as aforesaid, is invalid, both at law and in equity, and the act in virtue of which the said claim is made was unauthorized by the royal regulation of seventeen hundred and fifty-four, or by the laws cited therein, or by the said eighty-first article, the validity of the said title and claim of the said petitioners is, therefore, ordered, adjudged, and decreed against. And it is further ordered, adjudged, and decreed, that Auguste A. Chouteau, Gabriel Cerré Chouteau, Henry Chouteau, Edward Chouteau, Eulalie Paul, and René Paul, husband of said Eulalie, Louise Paul, and Gabriel Paul, husband of said Louise, Emilie Smith, and Thomas F. Smith, husband of said Emilie, pay all costs occasioned by the prosecution and defence of this suit, and that execution go therefor.

MISSOURI DISTRICT, sct.

I, Joseph Gamble, Clerk of the late court of the United States for the Missouri district, under the authority of an act of Congress, approved May 24th, 1824, and entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," certify that the foregoing is a full, true, and complete transcript of the record and proceedings of said court, as the same remains in my office, in a certain cause therein determined, in which Henry Chouteau and others, heirs and devisees of Auguste Chouteau, deceased, were petitioners for the confirmation of twelve hundred and eighty-one arpents of land.

Given under my hand and private seal, there being no seal of court provided, at St. Louis, this first day of October, 1830.

JO. GAMBLE.